



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

October 21, 2020

Mr. Joe D. Gonzales
Civil Division
Bexar County Criminal District Attorney's Office
101 West Nueva Street
San Antonio, Texas 78205

OR2020-26499

Dear Mr. Gonzales:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 850133 (Ref. No. 8874).

The Bexar County Medical Examiner's Office (the "medical examiner's office") received a request for specified polices and information pertaining to all COVID-19 related autopsies. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted of information.

Initially, we note you have not submitted information responsive to all the categories of information to which the requestor seeks access. Although you state you have submitted a representative sample of the requested information, we find the submitted information is not representative of all of the types of information at issue. Please be advised, this open records letter ruling applies only to the types of information you have submitted for our review. This ruling does not authorize the medical examiner's office to withhold any information that is substantially different from the types of information you have submitted to this office. *See* Gov't Code § 552.302 (where request for attorney general decision does not comply with requirements of Gov't Code § 552.301, information at issue is presumed to be public). Accordingly, to the extent any information responsive to the portion of the request seeking specified policies existed on the date the medical examiner's office received the request, we assume the medical examiner's office has released it. If the medical

examiner's office has not released any such information, it must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes no exceptions apply to requested information, it must release information as soon as possible).

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses information made confidential by section 81.046 of the Health and Safety Code, which provides, in part:

(a) Reports, records, and information received from any source, including from a federal agency or from another state, furnished to a public health district, a health authority, a local health department, or the [Texas Department of State Health Services] that relate to cases or suspected cases of diseases or health conditions are confidential and may be used only for the purposes of this chapter.

(b) Reports, records, and information relating to cases or suspected cases of diseases or health conditions are not public information under [the Act], and may not be released or made public on subpoena or otherwise except as provided by Subsections (c), (c-1), (d), and (f).

Health & Safety Code § 81.046(a), (b). In Open Records Decision No. 577 (1990), this office concluded any information acquired or created during an investigation under chapter 81 of the Health and Safety Code is confidential and may not be released unless an exception in the statute applies. *See* ORD 577; Health & Safety Code § 81.046(b)-(d), (f). You inform us the submitted information "is derived from autopsy reports for individuals who had or were suspected to have COVID-19." Therefore, you assert the information at issue "relates to reported cases and suspected cases of COVID-19." Additionally, you state the medical examiner's office is required to report this information to the health authority. Upon review, we agree section 81.046 governs the release of the information at issue. You also state none of the release provisions of section 81.046 are applicable. Accordingly, the medical examiner's office must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 81.046(b) of the Health and Safety Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at <https://www.texasattorneygeneral.gov/open-government/members-public/what-expect-after-ruling-issued> or call the OAG's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable

charges for providing public information under the Public Information Act may be directed to the Cost Rules Administrator of the OAG, toll free, at (888) 672-6787.

Sincerely,

Emily Kunst
Assistant Attorney General
Open Records Division

EK/jxd

Ref: ID# 850133

Enc. Submitted documents

c: Requestor
(w/o enclosures)